

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 28th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Min Lin,
Petitioner,

-v.-

U.S. Attorney General,
Respondent.

No. 06-0550-ag
NAC
A79-630-137

FOR PETITIONER: Liu Yu, New York, New York.

FOR RESPONDENT: Rita R. Valdrini, Acting United States Attorney for the Northern District of West Virginia, Peter Keisler, Assistant United States Attorney, Wheeling, West Virginia.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1 Petitioner Lin Min, a native and citizen of the People’s Republic of China, seeks review
2 of a January 13, 2006 order of the BIA affirming the April 15, 2004 decision of Immigration
3 Judge (“IJ”) Douglas Shoppert denying petitioner’s application for asylum, withholding of
4 removal, and relief under the Convention Against Torture (“CAT”). *In re Min Lin*, No. A79-
5 630-137 (B.I.A. Jan. 13, 2006), *aff’g* No. A79-630-137 (Immig. Ct. N.Y. City April 15, 2004).
6 We assume the parties’ familiarity with the underlying facts and procedural history of the case.

7 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an
8 opinion, *see* 8 C.F.R. § 1003.1(e)(4), we review the IJ’s decision as the final agency
9 determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S.*
10 *Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). We review the agency’s factual findings
11 under the substantial evidence standard. We review *de novo* questions of law and the application
12 of law to undisputed fact. *See, e.g., Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

13 Persecution is an extreme concept that does not include all treatment that we regard as
14 offensive. *Ai Feng Yuan v. Dep’t of Justice*, 416 F.3d 192, 198 (2d Cir. 2005) (referencing
15 *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir.1995)). This Court has explained that persecution
16 must rise above mere harassment, but it is not limited to threats to life or freedom; non-life-
17 threatening violence and physical abuse also fall within this category. *Tian-Yong Chen v. INS*,
18 359 F.3d 121, 128 (2d Cir. 2004). Although the record indicates that Lin was never arrested,
19 detained, physically harmed, financially penalized or otherwise severely mistreated at the hands
20 of the village cadres, we need not decide if the IJ’s conclusion that petitioner failed to establish
21 past persecution is correct. Here, substantial evidence supports the IJ’s determination that Lin
22 could have safely relocated within China, and done so regardless of whether we treat the burden
23 on this issue to be on her or on the government. According to the background materials, as a
24 single, childless woman who is not pregnant, Lin has not violated the family planning policy.

1 Substantial evidence also supports the IJ's finding that Lin could have lived safely elsewhere in
2 China as indicated by her successful relocation to Fuzhou, and as further supported by the
3 relocation of the woman in her village who had actually violated the family planning policy.
4 Because Lin could have relocated without fear of persecution, she also failed to prove her
5 eligibility for withholding of removal. Finally, Lin did not argue that she qualifies for CAT relief
6 in her brief to this Court. That claim is therefore considered waived. *See Norton v. Sam's Club*,
7 145 F.3d 114, 117 (2d Cir. 1998).

8 For the foregoing reasons the petition for review is DENIED. Any pending motion for a
9 stay of removal in this petition is DENIED.

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13 FOR THE COURT:
14 Roseann B. MacKechnie, Clerk
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By: _____